IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10597 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

R.T. KHANGANI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10597 of 2003

MR AS SUPEHIA for Petitioner No. 1

MS. MITA PANCHAL, AGP for Respondent No. 1

MR ANANT S DAVE for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE M.S.SHAH

Date of decision: 08/09/2004

ORAL JUDGEMENT

Rule. Ms. Mita Panchal, learned AGP for respondent No.1 and Mr. Anant S Dave, learned advocate

for respondent No.2 waive service of notice of rule for the respective parties.

2. In this petition filed under Article 226 of the Constitution of India, the petitioner, who retired as Executive Engineer, when the petitioner was on deputation with the Sardar Sarovar Narmada Nigam Limited, has prayed for a direction to the respondents to pay the petitioner gratuity with interest and interest on the amount of arrears of provisional pension.

3. The petitioner retired on superannuation on 31.7.2002. The petitioner was paid provisional pension from 7.3.2003 onwards. During pendency of the petition, the petitioner has also been paid gratuity on 27.7.2004. Mr. A.S.Supehia, learned advocate for the petitioner has therefore submitted that the petitioner is entitled to be awarded interest on the arrears of provisional pension and on delayed payment of gratuity for the period from 1.8.2002 till the date of payment.

4. On the other hand Ms. Mita Panchal, learned AGP for the respondent State has submitted on the basis of the reply affidavit that the petitioner's service book did not contain sufficient details to prepare the pension papers in time and therefore after calling for necessary documents from the petitioner and after completing necessary procedure, provisional pension was paid to the petitioner on 7.3.2003, hence there was no deliberate or willful delay on the part of the Government. As regards the payment of gratuity, it is submitted that since gratuity is also paid during pendency of the petition on 27.7.2004, no interest is required to be awarded on the said amount, more particularly, because respondent No.2 Corporation informed the Government on 12.3.2003 that the inquiry against the petitioner was proposed in the matter and the matter was sent to the Government for taking final decision, hence only thereafter the gratuity can be released to the petitioner. It is, therefore, stated that as far as the State Government is concerned, it had already informed the respondent No.2 Corporation on 25.3.2003 that the provisional gratuity be sanctioned as no formal departmental inquiry was pending. Mr. Anant S Dave, learned advocate for respondent No.2 submits that the petitioner was an officer of the State Government and therefore the liability, if any, to pay interest would be that of the Government and not of the Corporation.

5. Having heard learned counsels for the parties, this Court is of the view that as far as time taken for payment of provisional pension is concerned, about six

months time cannot be said to be unreasonable as the service book of the petitioner did not contain sufficient details to enable the respondents to prepare pension papers by the date of his retirement. Hence, after due scrutiny necessary documents were asked for from the petitioner and accordingly, since the petitioner was paid the provisional pension within about six months from the date of retirement, the Court does not propose to direct the respondents to pay any interest to the petitioner for the so called delay in payment of provisional pension.

6. Coming to the delay in payment of gratuity the respondents paid the gratuity to the petitioner almost two years after the date of his retirement. The only justification for the delay is that an inquiry was proposed against the petitioner and therefore the matter was sent to the Government for taking final decision. Even from the reply affidavit dated 15.10.2003 filed on behalf of the State Government, it is clear that on 12.3.2003 respondent No.2 Corporation had informed the Government that inquiry against the petitioner was proposed and the matter was sent to the Government for taking final decision. But the Corporation itself had opined that there was no responsibility to be fixed on the petitioner as per the inquiry officer's report. However, final decision can be taken by the State Government only after the concurrence of the Vigilance Commission. As per the statement being made by Ms. Mita Panchal, learned AGP, under instructions of Mr. D.G.Bhatt, Under Secretary (Service) in the Narmada & Water Resources Department, Vigilance Commission gave its opinion on 19.3.2004 and it is therefore submitted that for payment of gratuity also, there was no deliberate or willful delay on the part of the respondents.

7. Having heard learned counsel for the parties it appears to the Court that when the report of the inquiry officer in the preliminary inquiry itself indicated that there was no responsibility to be fixed on the petitioner, merely because the State Government took some time in taking the final decision, may be in consultation with the Vigilance Commission, it cannot be said that the petitioner was at fault for the delay in payment of gratuity. Even granting the respondents six months' time for completing the formalities and taking decision on the question of departmental inquiry, it appears that there was some delay on the part of the respondents in paying the petitioner gratuity. Therefore, it appears to the Court that in the facts and circumstances of the case it would be reasonable to award the petitioner interest @ 9% on the amount of gratuity for the period from 1.4.2003

till the date of payment of gratuity on 27.7.2004.

8. In view of the above discussion, while rejecting the petitioner's claim for interest on the amount of provisional pension, the respondents are directed to pay the petitioner interest @ 9% on the amount of gratuity from 1.4.2003 to 27.7.2004. This direction shall be complied with by 30.10.2004.

9. Rule is made absolute to the aforesaid extent only with no order as to costs.

(M.S.Shah,J)

Jayanti*